100 percent of damages found by a court. Most agree that this unfairly treats defendants who have only a small percentage of responsibility.

As originally introduced, S. 240 provided for joint and several liability to be maintained only for primary wrongdoers, knowing violators, and those controlling knowing violators.

As the bill reported by the committee, only knowing violators are held joint and severally liable. Knowing securities fraud is defined in the bill to exclude reckless violators, whose liability would be reduced to proportional liability. Additionally, if the judgment is uncollectible, proportionally liable defendants can be held to pay an additional 50 percent of their share, and can be made to pay the uncollectible share to investors with net worth less than $200,000 and who have lost more 10 percent of their net worth. Under the 50 percent provision, a defendant could be liable for up to 150 percent of their proportional share.

The bill's proportionality provision is an improvement over current law, but may not fully protect investors when a judgment is uncollectible from a primary defendant. An exception was carved out so that those who have invested more than 10 percent of their net worth might still recover at least some portion of the damages even from the non-primary defendant.

An amendment proposed by Senators BRYAN and SHELBY would have allowed for full reallocation of uncollectible shares among culpable defendants, while maintaining a system of proportionality as contained in the committee bill, to protect minimally responsible defendants, who are usually the accountants and attorneys, but at the same time would have been, I believe, fairer to victims of investment fraud.

I supported this important amendment because I believed that it was a vast improvement over the current system of joint and several liability, but also as a stronger protection for investors.

To conclude, Mr. President, I am disappointed that the managers supporting S. 240 rejected the amendments offered that I voted for. Perhaps some further enlightenment and discussion will inspire the conferees to incorporate some of them to ensure the balance that I think the legal system also calls for.

Because the current system and its problems should not be left alone, I still came to the conclusion that a vote for the bill was in the interests of the people I represent and the country. Most of us may not be aware of the way the securities litigation system ultimately affects jobs, economic growth, and opportunity. The proponents of this bill have reminded us of these very real-life and serious effects. Today, I felt it was time to support action to revise and change the system so that it's more about common sense than a proliferation of lawyers and legal costs.

PRIVATE SECURITIES LITIGATION REFORM ACT

Mr. DODD. Mr. President, now that the Senate has completed action on S. 240, the Securities Litigation Reform Act, I wanted to take a few moments to focus on many of the salient provisions of this legislation that were not fully discussed during our 5 days of debate on 17 different amendments.

Of course, I am extremely pleased that the legislation received an overwhelming vote of support from my colleagues this morning, passing by a margin of 70 to 29.

This vote is yet another confirmation of the very strong bipartisan support that the bill has received in the Senate and it also reflects the broad coalition of investor groups and businesses that have supported these reform efforts for the past 4 years.

This is certainly an important day for American investors and the American economy. Passage of S. 240 puts us well on the road to restoring fairness and integrity to our securities litigation system.

To some, this may sound like a dry and technical subject, but in reality, it is crucial to our investors, our economy and our international competitiveness. We are all counting on our high-technology and bio-technology firms to fuel our economy into the 21st century. We are counting on them to create jobs and to lead the charge for us in the global marketplace.

But those are the same firms that are most hamstrung by a securities litigation system that works for no one—save plaintiffs' attorneys.

Over the past 1½ years, the intense scrutiny on the securities litigation system has dramatically changed the terms of debate, as we have seen on the floor for the past 5 days.

We are no longer arguing about whether the current system needs to be repaired; we are now focused on how best to repair it.

Even those who once maintained that the litigation system needed no reform are now conceding that substantive and meaningful changes are required if we are to maintain the fundamental integrity of private securities litigation.

The flaws in the current system are simply too obvious to deny. The record is replete with examples of how the system is being abused and misused.

While there has been much discussion of the position of the Securities and Exchange Commission, it is important to note that the Chairman of the SEC, Arthur Levitt, agrees with the fundamental notion that we must enact some meaningful reform:

> There is no denying that there are real problems in the current system—problems that need to be addressed not just because of abstract rights and responsibilities, but because investors and markets are being hurt by litigation excesses.

The legislation under consideration today is based upon the bill that Senator DOMENICI and I have introduced for the last two Congresses.

There are some provisions from the original version of S. 240 that I would have liked to see included in this bill, such as an extension of the statute of limitations on private actions.

In fact, I strongly supported an amendment offered by my good friend, Senator BRYAN, that would have extended the statute of limitations from 1 year after the fraud is discovered to 2 years and from 3 years after the actual perpetration of the fraud to 5 years.

It is also important to note that the statute of limitations was decreased by the Supreme Court in last year's Central Bank decision, and not by any part of S. 240.

But I certainly understand why this provision was taken out of the committee's product. It is excruciatingly difficult to produce a balanced piece of legislation, especially in such a complex and contentious area.

But that is exactly what the Senate passed today, a bill that carefully and considerately balances the needs of our high-growth industries with the rights of investors, large and small. I am proud of the spirit of fairness and equity that permeates the legislation.

I am also proud of the fact that this legislation tackles a complicated and difficult issue in a thoughtful way that avoids excess and achieves a meaningful equilibrium under which all of the interested parties can survive and thrive.

As I stated earlier, this is a broadly bipartisan effort. This bill passed the Banking Committee with strong support from both sides of the aisle, and the 70 Senators from both parties who voted in favor of the bill this morning, represent all points on the so-called ideological spectrum.

I believe that this morning's strong show of support displays the desire of the Senate to stand in favor of the balanced approach of S. 240. In my view this vote also demonstrates the Senate's disagreement with the more extreme securities reform bill (H.R. 1058) that passed the other body in March.

Those of us who have supported this legislation must be very mindful of the close vote that occurred on the second SARBANES amendment to further limit the safe harbor provisions of the bill.

I, for one, am committed to ensuring that as we move to a conference with the other body, we retain a safe harbor provision that is truly meaningful but that gives no aid and comfort to those who would try to defraud investors.

And I would like to use this opportunity to reinforce the statement that I made earlier today: I will urge my colleagues to reject any conference report that includes safe harbor provisions —or any other provision for that matter—that are so broadly expanded that they breach the rights of legitimately aggrieved investors.

Mr. President, H.L. Mencken once said that every problem has a solution that is neat, simple, and wrong. Believe me, if there were a simple solution to the problems besetting securities litigation today, we would have been able to pass a bill after 5 minutes, rather than 5 days, of floor debate.

But these problems are so pervasive and complex that we have moved far beyond the point where the public interest is served by waiting for the courts or other bodies to fix them for us.

The private securities litigation system is too important to the integrity and vitality of American capital markets to continue to allow it to be undermined by those who seek to line their own pockets with abusive and meritless suits.

Let me be clear: Private securities litigation is an indispensable tool with which defrauded investors can recover their losses without having to rely upon Government action.

I cannot possibly overstate just how critical securities lawsuits brought by private individuals are to ensuring public and global confidence in our capital markets. These private actions help deter wrongdoing and help guarantee that corporate officers, auditors, directors, lawyers, and others properly perform their jobs. That is the high standard to which this legislation seeks to return the securities litigation system.

But as I said at the beginning of floor debate, the current system has drifted so far from that noble role that we see more buccaneering barristers taking advantage of the system than we do corporate wrongdoers being exposed by it.

But there is more at risk if we fail to reform this flawed system. Quite simply, the way the private litigation system works today is costing millions of investors—the vast majority of whom do not participate in these lawsuits—their hard-earned cash.

Mary Ellen Anderson, representing the Connecticut Retirement & Trust Funds and the Council of Institutional Investors, testified that the participants in the pension funds,

> . . . are the ones who are hurt if a system allows someone to force us to spend huge sums of money in legal costs . . . when that plaintiff is disappointed in his or her investment. Our pensions and jobs depend on our employment by and investment in our companies. If we saddle our companies with big and unproductive costs . . . we cannot be surprised if our jobs and raises begin to disappear and our pensions come up short as our population ages.

There lies the risk of allowing the current securities litigation system to continue to run out of control. Ultimately, it is the average investor, the retired pensioner who will pay the enormous costs clearly associated with this growing problem.

Much of the problem lies in the fact that private litigation has evolved over the years as a result of court decisions rather than explicit Congressional action.

Private actions under rule 10(b) were never expressly set out by Congress, but have been construed and refined by courts, with the tacit consent of Congress. But the lack of Congressional involvement in shaping private litigation has created conflicting legal standards and has provided too many opportunities for abuse of investors and companies.

First, it has become increasingly clear that securities class actions are extremely vulnerable to abuses by entrepreneurs masquerading as lawyers. As two noted legal scholars recently wrote in the Yale Law Review:

> . . . The potential for opportunism in class actions is so pervasive and evidence that plaintiffs' attorneys sometimes act opportunistically so substantial that it seems clear that plaintiffs' attorneys often do not act as investors' ''faithful champions.''

It is readily apparent to many observers in business, academia—and even Government—that plaintiffs' attorneys appear to control the settlement of the case with little or no influence from either the named plaintiffs or the larger class of investors.

For example, during the extensive hearings on the issue before the Subcommittee on Securities, a lawyer cited one case as a supposed showpiece of how well the existing system works. This particular case was settled before trial for $33 million.

The lawyers asked the court for more than $20 million of that amount in fees and costs. The court then awarded the plaintiffs' lawyers $11 million and the defense lawyers for the company $3 million. Investors recovered only 6.5 percent of their recoverable damages. That is 6½ cents on the dollar.

This kind of settlement sounds good for entrepreneurial attorneys, but it does little to benefit companies, investors or even the plaintiffs on whose behalf the suit was brought.

A second area of abuse is frivolous litigation. Companies, particularly in the high-technology and bio-technology industries, face groundless securities litigation days or even hours after adverse earnings announcements.

In fact, the chilling consequence of these lawsuits is that companies—especially new companies in emerging industries—frequently release only the minimum information required by law so that they will not be held liable for any innocent, forward-looking statement that they may make.

Last week, I related to my colleagues the case of Raytheon Co., one of the Nation's largest high-tech, firms. This example warrants recapitulation here. Raytheon made a tender offer of $64 a share for E-Systems, Inc., a 41 percent premium over the closing market price. Let me allow Raytheon to explain what happened next:

> Notwithstanding the widely held view that the proposed transaction was eminently fair to E-Systems shareholders, the first of eight purported class action suits was filed less than 90 minutes after the courthouse doors opened on the day that the transaction was announced. [Raytheon letter to Senator Dodd; June 19, 1995.]

No one lawyer could possibly have investigated the facts this quickly. What the lawyers want here is to force a quick settlement.

The Supreme Court in Blue Chip Stamps versus Manor Drug Store echoed this concern about abusive litigation, pointing out:

> [i]n the field of federal securities laws governing disclosure of information, even a complaint which by objective standards may have very little success at trial has a settlement value to the plaintiff out of any proportion to its prospect of success at trial . . . The very pendency of the lawsuit may frustrate or delay normal business activity of the defendant which is totally unrelated to the lawsuit.

The third area of abuse is that the current framework for assessing liability is simply unfair and creates a powerful incentive to sue those with the deepest pockets, regardless of their relative complicity in the alleged fraud.

The result of the existing system of joint and severable liability is that plaintiffs' attorneys seek out any possible corporation or individual that has little relation to the alleged fraud—but which may have extensive insurance coverage or otherwise may have financial reserves. Although these defendants could frequently win their case were it to go trial, the expense of protracted litigation and the threat of being forced to pay all the damages make it more economically efficient for them to settle with the plaintiffs' attorneys.

The current Chairman of the SEC, Arthur Levitt, as well as two former Chairmen, Richard Breeden and David Ruder, have all spoken out against the abuses of joint and several liability. Chairman Levitt said at the April 6 hearing of the Securities Subcommittee that he was concerned, in particular, ''about accountants being unfairly charged for amounts that go far beyond their involvement in particular fraud.''

Frequently, these settlements do not appreciably increase the amount of losses recovered by the actual plaintiffs, but instead add to the fees collected by the plaintiffs' attorneys.

Again, the current system has devolved to a point where it favors those lawyers who are looking out for their own financial interest over the interest of virtually everybody else.

At the beginning of debate on this bill, I spent a fair amount of time discussing, in some detail, the various provisions of the legislation. I would like to again return our focus to how the legislation that the Senate passed earlier today deals with the existing problems in the securities litigation system:

First, the legislation empowers investors so that they, not their lawyers, have greater control over their class action cases by allowing the plaintiff with the largest claim to be the named plaintiff and allowing that plaintiff to select their counsel.

Second, it gives investors better tools to recover losses and enhances existing provisions designed to deter fraud, including providing a meaningful safe harbor for legitimate forward-looking statements so that issuers are encouraged, instead of discouraged, from volunteering much-needed disclosures.

Third, it limits opportunities for frivolous or abusive lawsuits and makes it easier to impose sanctions on those lawyers who violate their basic professional ethics.

Fourth, it rationalizes the liability of deep-pocket defendants, while protecting the ability of small investors to fully collect all damages awarded them through a trial or settlement.

I would like to go into each of these provisions in more detail.

The legislation ensures that investors, not a few enterprising attorneys, decide whether to bring a case, whether to settle, and how much the lawyers should receive.

The bill strongly encourages the courts to appoint the investor with the greatest losses—usually an institutional investor like a pension fund—to be the lead plaintiff. This plaintiff would have the right to select the lawyer to pursue the case on behalf of the class.

So for the first time in a long time, plaintiffs' lawyers would have to answer to a real client. We are bringing an end to the days when a plaintiffs attorney can crow to Forbes magazine that ''I have the greatest practice of law in the world. I have no clients.''

The bill requires that notice of settlement agreements that are sent to investors clearly spell out important facts such as how much investors are getting—or giving up—by settling and how much their lawyers will receive in the settlement. This means that plaintiffs would be able to make an informed decision about whether the settlement is in their best interest—or in their lawyers' best interest.

And the bill would end the practice of the actual plaintiffs receiving, on average, only 6 to 14 cents for every dollar lost, while 33 cents of every settlement dollar goes to the plaintiffs' attorneys. This bill would require that the courts cap the award of lawyers fees based upon how much is recovered by the investors. Simply putting in a big bill will not guarantee the lawyers multimillion-dollar fees if their clients are not the primary beneficiaries of the settlement.

Taken together, these provisions should ensure that defrauded investors are not cheated a second time by a few unscrupulous lawyers who siphon huge fees right off the top of any settlement.

The bill mandates, for the first time in statute, that auditors detect and report fraud to the SEC, thus enhancing the reliability of independent audits. The bill maintains current standards of joint and several liability for those persons who knowingly engage in a fraudulent scheme, thus keeping a heavy financial penalty for those who would commit knowing securities fraud.

The bill restores the ability of the Securities and Exchange Commission to pursue those who aid and abet securities fraud, a power that was diminished by the Supreme Court in last year's Central Bank decision.

With regard to frivolous litigation, the bill clarifies current requirements that lawyers should have some facts to back up their assertion of securities fraud by adopting the reasonable standards established by the second circuit court of appeals. This legislation is therefore using a pleading standard that has been successfully tested in the real world; this is not some arbitrary standard pulled out of a hat.

The bill requires the courts, at settlement, to determine whether any attorney violated rule 11 of the Federal Rules of Civil Procedure, which prohibits lawyers from filing claims that they know to be frivolous. If a violation has occurred, the bill mandates that the court must levy sanctions against the offending attorney. Though the bill does not change existing standards of conduct, it does put some teeth into the enforcement of these standards.

The bill provides a moderate and thoughtful statutory safe harbor for predicative statements made by companies that are registered with the SEC. It provides no such safety for third parties like brokers, or in the case of merger offers, tenders, roll-ups, or the issuance of penny stocks. There are a number of other exceptions to the safe harbor as well. Importantly, anyone who deliberately makes false or misleading statements in a forecast is not protected by the safe harbor.

By adopting this provision, the Senate will encourage responsible corporations to make the kind of disclosures about projected activities that are currently missing in today's investment climate.

While almost everyone, including SEC chairman Arthur Levitt, recognizes the need to create a stronger safe harbor for forward-looking statements, this is clearly one of the most controversial parts of the bill.

I recognize the desire of my colleagues who have opposed this provision to clearly and firmly protect investors from fraudulent statements by corporate executives, and I am committed to maintaining the most balanced possible language on safe harbor as we enter into conference with the other body.

I would point out that the legislation preserves the rights of investors whose losses are 10 percent or more of their total net worth of $200,000. These small investors would still be able to hold all defendants responsible for paying off settlements, regardless of the relative guilt of each of the named parties.

And while the bill would fully protect small investors—so that they would recover all of the losses to which they are entitled—the bill establishes a proportional liability system to discourage the naming of deep-pocket defendants.

The court would be required to determine the relative liability of all the defendants, and thus deep-pocket defendants would only be liable to pay a settlement amount equal to their relative role in the alleged fraud. A defendant who was only 10 percent responsible for the fraudulent actions would only be required to pay 10 percent of the settlement amount. In some circumstances, the bill requires solvent defendants to pay 150 percent of their share of the damages, to help make up for any uncollectible amount. By creating a two-tiered system of both proportional liability and joint-and-several liability, the bill preserves the best features of both systems.

Mr. President, the legislation passed by the Senate today will keep the door to the courthouse wide open for those investors who legitimately believe that they are the victims of fraud, while slamming the door shut to those few entrepreneurial attorneys who file suit simply with the intent of enriching themselves through coercing settlements from as many defendants as possible.

It has become clear that today's securities litigation system has become a system in which merits and facts matter little, in which plaintiffs recover less than their attorneys, and in which defendants are named solely on the basis of the amount of their insurance coverage or the size of their wallet; in short, we have a system in which there is increasingly little integrity and confidence. Mr. President, such a system of litigation is rendered incapable of producing the confidence and integrity in our Nation's capital markets for which it was originally designed.

I am extremely pleased that this morning the Senate took the important step of repairing this ailing system by overwhelmingly passing the Securities Litigation Reform Act.

NATIONAL DAIRY MONTH

Mr. LEAHY. Mr. President, I want to bring to your attention that June is National Dairy Month.

Earlier this month I was in Vermont during the Enosburg Falls Dairy Festival in Franklin County, VT, home of some of the finest dairy farms and dairy products in America.

June 1, 1995, was Dairy Day in Montpelier, the State capital. There was a grand celebration with cows on the State house lawn and a milking contest. It was the first chance for Vermont's new agriculture commissioner, Leon Graves, a dairy farmer himself, to show his expertise. And while the celebration is light hearted and fun, there is a serious side to it.

In Vermont we stop and take the time to celebrate the importance of dairy farmers in our State and the importance of milk in our lives. In Vermont we pay tribute to the men and women of America who get up so early in the morning to milk the cows and bring us the safest, most wholesome supply of milk in all the world. I think